CREDIT SUISSE

June 3, 2016

By electronic submission to www.federalreserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Robert de V. Frierson, Secretary

Re: Notice of Proposed Rulemaking – Single-Counterparty Credit Limits for Large Banking Organizations.

Docket No. R—1534; RIN 7100 AE-48

Ladies and Gentlemen:

Credit Suisse AG ("Credit Suisse") appreciates the opportunity to comment on the notice of proposed rulemaking issued by the Board of Governors of the Federal Reserve System (the "Board") to implement the single-counterparty credit limits ("SCCL") for i) U.S. bank holding companies ("BHCs"), ii) foreign banking organizations ("FBOs") and iii) U.S. intermediate holding companies ("IHCs"), in each case with total consolidated assets of $50 billion or more (the "Proposed Rule").[1] The Proposed Rule would implement Section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which requires the Board to prescribe standards that limit "the risks that the failure of any individual company could pose" to such bank holding company or to a systemically-important nonbank financial company.

The Board should be commended for its hard work in seeking to finalize this important element of the Dodd-Frank Act. However, in our view the Proposed Rule contains significant flaws that ought to be corrected in the final rule. While we generally wish to associate ourselves with the broad concerns raised in the comment submitted by The Clearing House Association the American Bankers Association, The Financial Services Roundtable, and the Securities Industry and Financial Markets Association ("the

1 81 Fed. Reg. 14,328 (March 16, 2016). An FBO is required to form or designate an IHC if the FBO has $50 billion or more in U.S. non-branch assets. Thus, IHCs generally would be expected to have $50 billion or more in assets.

Associations"), as well as those noted in the comment submitted by the Institute of International Bankers ("IIB"), we seek to highlight the following key concerns:

1. The Proposed Rule's Approach to Calculating Exposures to Derivatives Transactions Should be Revised to Permit IHCs/FBOs to use Internal Models Methodology

Under the Proposed Rule, a covered company is permitted to calculate gross exposure to certain derivative transactions using any methodology that the covered company is permitted to use under the Board's regulatory capital rules, potentially including the internal models methodology ("IMM").[2] We believe the Proposed Rule took a step in the right direction by permitting the use of the IMM as an alternative to the current exposure methodology ("CEM") for the calculation of credit exposures arising from these transactions. This decision will provide "advanced approaches" firms with important additional flexibility. However, we are concerned that the practical impact of this approach will be to create competitive inequities between IHCs and FBOs on the one hand, and BHCs on the other.

IHCs – irrespective of size – are authorized to use advanced approaches for purposes of calculating their SCCL exposures where the IHC has already been authorized to use that method under the Board's Regulation Q. The combined U.S. operations ("CUSO") of an FBO are, however, unable to benefit from the use of IMM for SCCL purposes because there is no U.S. approval process in place for the use of IMM at an FBO's unconsolidated level, such as the FBO's combined U.S. operations. Thus, as a practical matter, FBOs generally are not expected to use IMM in the United States for regulatory capital purposes.

As a result, the Proposed Rule creates a de-facto disadvantage for IHCs by requiring such entities to use the significantly more conservative CEM framework for calculating derivative exposures. As the IIB comment letter notes[3], this could act as a further constraint on the ability of IHCs to extend credit and add additional complexity to risk management of the firm's U.S. operations. Moreover, use of CEM to calculate derivatives exposures does little to advance the purpose of the Proposed Rule given that it does not always fully account for derivatives correlations and netting benefits, therefore providing an inaccurate portrayal of the covered firm's counterparty exposures.

We support an amendment to the Proposed Rule that would establish a process for allowing use of IMM by IHCs and FBOs for the purpose of calculating their SCCL exposures. Specifically, we encourage the Board to permit FBOs that have been the subject of a comparably rigorous IMM approval processes in their home country jurisdictions to use those internal models for the purposes of compliance with the SCCL

---

[2] Sections 252.173(a)(11)(i)(A) and 252.173(a)(11)(ii)(A).

[3] IIB Letter, at p. 21

rule.[4] This approach would avoid requiring firms to undergo an IMM approval and "parallel run" process that could take several years to complete, thereby providing a more immediate and practical solution to current inequitable treatment of FBOs and IHCs relative to BHCs under the Proposed Rule. As the IIB letter notes, this approach is also consistent with the principle of giving due regard to comparable home country treatment, which is a key requirement of Section 165 of the Dodd-Frank Act.

2. The Connected Counterparty Aggregation Provisions of the Proposed Rule Should be Revised

We understand the importance of aggregating exposures across certain related counterparties in order to appropriately capture the level of exposure risk that exists. However, we broadly agree with the Associations' letter that the "connected counterparty" framework set out in the Proposed Rule would present significant and potentially insurmountable operational challenges while doing very little to appropriately capture the true risk exposure to a single counterparty.[5]

The Proposed Rule requires covered companies to aggregate exposures to a counterparty with exposures to any entity which respect to which such counterparty i) owns, controls, or holds with a power to vote 25 percent or more of a class of voting securities of the person; ii) owns or controls 25 percent or more of the total equity of the person; or iii) consolidates for financial reporting purposes.[6] It also requires aggregation of counterparty exposures when a "control relationship" exists between those counterparties.[7] Finally, an "economic interdependence" test would be applied where exposures to a single counterparty exceed 5 percent of the covered entity's capital base (U.S. tier 1 capital in the case of an IHC, and global tier 1 capital in the case of the FBO's CUSO). Exposures to entities that are considered economically dependent would need to be aggregated.[8]

4 This is consistent with the position advanced in the IIB letter, at p. 21.

5 Associations' Letter, at p. 20.

6 Section 252.171(e)(2).

7 A control relationship is based upon i) the presence of voting agreements; ii) the ability of one counterparty to significantly influence the appointment or dismissal of another counterparty's administrative, management or governing body, or the fact that a majority of members of such body have been appointed solely as a result of the exercise of the first counterparty's voting rights; and iii) the ability of one counterparty to exercise a controlling influence over the management or policies of another counterparty. See Section 252.76(b).

8 Economic interdependence is determined by the following factors: i) whether 50 percent or more of one counterparty's gross revenue or gross expenditures are derived from transactions with the other counterparty; ii) whether one counterparty (counterparty A) has fully or partly guaranteed the credit exposure of the other counterparty (counterparty B), or is liable by other means, and the credit exposure is significant enough that counterparty B is likely to default if presented with a claim relating to the guarantee or liability; iii) whether 25 percent or more of one counterparty's production or output is sold to the other counterparty, which cannot easily be replaced by other customers; iv) whether the expected source of funds to repay any credit exposure between the counterparties is the same and at least one of the counterparties does not have another source of income from which the extension of credit may be fully repaid; v) whether the financial distress of one counterparty (counterparty A) is likely to impair the ability of the other counterparty (counterparty B) to fully and timely repay

Operationally, it would be very challenging – and potentially impossible, to conduct the appropriate due diligence on the ownership and control relationships between every counterparty to which the covered firm is exposed to. Such information will frequently not be in the public domain or easy to collect. We also concur with the Associations' comment that the definition of economic interdependence outlined in the Proposed Rule would lead to aggregation of exposures that are not, in fact, economically correlated in any meaningful way.[9]

The Board could address these problems by adopting a financial consolidation standard in its final rule. As the Associations' letter notes, the likelihood of actual economic dependence between counterparties is much higher when an entity is consolidated for financial reporting purposes. A financial consolidation approach would also address concerns about the ability of covered firms to collect the necessary information to determine control relationships; such relationships could be determined by the counterparty's financial statements. The adoption of a financial consolidation standard would also align the Proposed Rule more closely with international standards (e.g., the Basel Large Exposure Framework uses a 50 percent threshold for counterparty aggregation).[10] This would allow both U.S. BHCs and FBOs to create monitoring and compliance systems that can be used across jurisdictions. Should the Board not decide to adopt a financial consolidation standard, we believe it should adopt the proposals outlined in Section II, Part C of the Associations' letter.[11]

We also believe that the operational difficulties of determining counterparty control relationships could also be partially mitigated by including a materiality threshold of 5 percent of the covered company's applicable capital base with respect to the control relationship test. The Proposed Rule appropriately includes such a threshold for the economic interdependence test,[12] and there is no logical reason why the same materiality threshold should not be extended to the control relationship test.[13] At the same time, all covered firms should be required to have in place policies and procedures designed to prevent evasion of the required limits and provide for appropriate risk mitigation arising from correlated exposures, subject to Pillar II supervisory review by the Federal Reserve.

---

counterparty B's liabilities; vi) whether one counterparty (counterparty A) has made a loan to the other counterparty (counterparty B) and is relying on repayment of that loan in order to satisfy its obligations to the covered company, and counterparty A does not have another source of income that it can use to satisfy its obligations to the covered company; and (vii) any other indicia of interdependence that the covered company determines to be relevant to this analysis. See Section 252.76(a)(2).

9 Associations' Letter, at p 23.

10 Basel Committee on Banking Supervision, Supervisory Framework for Measuring and Controlling Large Exposures, at ¶ 22 (Apr. 2014). Available at: http://www.bis.org/publ/bcbs283.pdf.

11 Associations' Letter, pp. 24-28.

12 Section 252.76(a).

13 See Section 252.76(b).

Finally, we wish to make two additional points. First, in light of the significant difficulties covered firms will have in gathering the information necessary for compliance, we urge the Federal Reserve to make clear that determinations regarding economic interdependence and control relationships are subject to a reasonable inquiry standard (i.e., there should be good faith diligence into the relationship between a counterparty and other potentially related entities that is reasonable based on the transaction and other relevant circumstances). Second, the daily reporting requirement of aggregated exposures would create immense operational burdens that are disproportionate to the risk reduction benefits such reporting would provide. We generally support the Associations' recommendation regarding compliance and monitoring issues outlined in Section VI, Part D.[14]

3. The Board Should Clarify that Parent and Home Country Sovereign Exposures are Out-of-Scope of the "Foreign Exposure" Calculation

The staff memo recommending the Board issue the Proposed Rule indicates that the FBO's parent and home country sovereign will not be included in the foreign exposure calculation.[15] Nevertheless, such exclusions did not appear in the text of the Proposed Rule or in the preamble to the Proposed Rule. Consistent with the Section VI, Part A of the IIB comment letter, we ask that the Board clarify that the U.S. operations' or U.S. IHC's exposures to an FBO's parent, affiliates, or its home country sovereign are excluded from the "foreign exposure" calculation.[16]

4. The Proposed Rule's "look-through" and third-party exposure requirements would introduce operational complexities with minimal risk reduction benefits and should be revised

The Proposed Rule requires a covered company with $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposures ("Large Covered Company") to calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund or other special purpose vehicle ("SPV") if the covered company is not able to demonstrate that its gross credit exposure to each such issuer, based on only the exposures arising from its investment in such securitization vehicle, investment fund or SPV, is less than 0.25 percent of its eligible capital base.[17] If a Large Covered Company is required to conduct such a "look-through" and is unable to identify each issuer of assets of the securitization vehicle, investment fund or SPV, then the Large Covered Company must attribute its gross credit exposure to a single unknown counterparty and the unknown counterparty would be subject to the general

[14] Associations' Letter, pp. 75-76.

[15] Memo to Board of Governors from Staff Regarding Proposed rules to implement single-counterparty credit limits in section 165(e) of the Dodd-Frank Act. February 26, 2016.

[16] IIB letter, pp. 15-17.

[17] Section 252.175(a).

credit exposure limits under the Proposed Rule.[18] We believe these requirements should be revised, as discussed in detail below.

First, in our view, the scope of the Proposed Rule's "look-through" requirement is unclear because the term "other special purpose vehicle" has not been defined. Accordingly, the Proposed Rule's look-through requirement could be read to apply to all securitization vehicles, investment funds and other SPVs, regardless of their investment strategy or the nature of their underlying issuers. Certain categories of securitization vehicles, investment funds or other SPVs, however, are highly unlikely to result in exposures that approach the proposed limits, even when aggregated with other exposures to the same counterparty, or implicate the credit concerns which the Proposed Rule seeks to address. For example, the "issuers" of assets held by certain securitization vehicles, investment funds or other SPVs are natural persons. It is highly unlikely, however, that exposures to such natural persons would ever approach the proposed credit exposure limit or be so great as to remotely threaten the financial safety and soundness of the covered company, let alone the stability of the United States' financial system. The same point is true for exposures to small businesses.

Given the substantial operational burden associated with the look-through provision, we believe that the following types of funds should be exempted from this requirement: i) retail asset-backed securities (including those funds or vehicles backed by credit card receivables, auto-loans and residential mortgages); ii) pools of finance receivables based on small business receivables (such as equipment loans and leases, trade receivables and loans to auto dealers); and iii) commercial mortgage-backed securities. We also concur with the Associations' letter that funds registered under the Investment Company Act of 1940 should be exempt from the Proposed Rule's look-through requirement. As their letter states, such funds are subject to stringent diversification and asset quality requirements, thereby limiting the probability of economic correlation with the Large Covered Company's other credit exposures.[19] These funds are also subject to ongoing regulatory oversight, as well as fiduciary duty and independence requirements imposed on such fund's that should minimize or eliminate concerns about such funds being used to evade the SCCL otherwise applicable to the Large Covered Company investor.[20]

Second, although the preamble to the Proposed Rule and certain regulatory text suggests that any sort of credit exposure to a securitization vehicle, investment fund or SPV triggers the look-through,[21] other portions of the Proposed Rule suggest that the

---

18 Section 252.175(b)(2). We note that it is unclear as to whether a covered company would be required to attribute its entire exposure to such a single unknown counterparty or merely the portion of the exposure that the covered company is unable to connect to a specific issuer of assets. We urge the Federal Reserve to revise the Proposed Rule so as to clarify that a covered company is only required to do the latter.

19 15 U.S.C. § 80a-5(b)(1).

20 See 15 U.S.C. §§ 80a-10(a); 80a-2(a)(3), (19); 80a-35(a).

21 81 Fed. Reg. at 14342 ("Under the proposed rule, covered companies that have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be required to

look-through requirement only is implicated when a covered company invests directly in such vehicles or funds.[22] The application of the look-through requirement to securitization vehicles, investment funds or SPVs to which a covered company merely has credit exposure would encompass a wide range of activities and relationships. Many of these activities and relationships do not, however, involve the same credit concerns regarding exposures to underlying issuers that are implicated when a covered company invests directly in a fund or vehicle. For example, covered companies may engage in certain fiduciary, agency or custodial activities that may result in small and temporary exposures to a securitization vehicle, investment fund or other SPV. These temporary exposures do not involve the significant and ongoing exposures to an underlying issuer that the Proposed Rule's look-through requirement seeks to address. Moreover, the practical difficulties associated with gathering information needed to comply with the Proposed Rule (discussed in further detail below) are exacerbated in this context, as a covered company may not even have the limited information that is sometimes made available to investors in securitization vehicles, investment funds or other SPVs. Accordingly, we request that the Board revise the Proposed Rule to clarify that the look-through requirement applies only to those funds and vehicles in which the covered company directly invests or that have an extension of credit or a liquidity facility from the covered company."

Third, there are a number of significant practical challenges associated with a covered company's ability to comply with the look-through requirement. Principally, a Large Covered Company may not have access to information regarding the securitization vehicle, investment fund or other SPV's underlying assets. For example, managers of such funds or vehicles may not make information available to investors on a frequency that coincides with the Proposed Rule's daily compliance requirements. We recommend that the Federal Reserve revise the Proposed Rule to enable covered companies to rely on the prospectus or periodic reports provided by a fund manager for the purposes of satisfying the Proposed Rule's look-through requirement (even if the covered company is subject to compliance obligations under the Proposed Rule that are more frequent than the availability of information provided by the fund manager).

Given these significant practical challenges, covered companies may, as a matter of course, be forced to attribute all of their exposures to securitization vehicles, investment funds or other SPVs to a single unknown counterparty. For covered companies that have exposures to a wide range of funds and vehicles, it is possible that aggregate exposures to such a single unknown counterparty could approach the applicable credit exposure thresholds. As a result, covered companies may decline to invest in securitization vehicles, investment funds or other SPVs, which in turn could

---

analyze their credit exposure to the issuers of the underlying assets in an SPV in which the covered company invests or to which the covered company otherwise has a credit exposure.") (emphasis added); see also Section 252.173(b) (referencing "investments in and exposures to a securitization vehicle, investment fund, and other special purpose vehicle").

22 Section 252.175(a)(2)(i).

have a negative and long-lasting effect on credit markets. To avoid such a result, we urge the Board to consider incorporating the revisions to the Proposed Rule's look-through requirement which we have outlined above. In the event the Board is unwilling to do so, we would recommend that the Proposed Rule be revised, at a minimum, to permit covered companies to assign exposures to different categories or groups of unknown counterparties based on the type of vehicle that gives rise to the exposure.

Fourth, we note that the Proposed Rule also requires a covered company to recognize exposures to any "third party that has a contractual or other business relationship" with a securitization vehicle, investment fund or other SPV and whose failure or distress would likely result in a loss in the value of the covered company's investment in or exposure to such fund or vehicle.[23] The preamble to the Proposed Rule cites providers of credit support and "originators of assets" held by SPVs as examples of such third-parties.[24] However, in the context of retail asset-backed securities, it is virtually impossible that a covered company could have material exposure to any single natural person that is an underlying creditor, as we note above. Moreover, the failure or distress of a company that originates the underlying loans or other receivables would not necessarily correlate to the performance of the retail credits themselves. Covered companies also would face significant difficulty in identifying these third parties and determining the nature of the relationship between such third parties and the relevant fund or vehicle. Accordingly, we urge the Board to eliminate this third-party exposure requirement. Alternatively, we suggest that the scope of the third-party exposure requirement be limited to (i) third parties that provide a credit or liquidity facility to the special purpose vehicle and (ii) vehicles in which the covered company's investment exceeds the 0.25% threshold that applies to the look-through requirement.

If the third party exposure requirement is retained in the final rule, we believe it should be revised to more appropriately correlate the amount of recognized exposure to the third party with the amount of potential loss that could result from such third party's financial distress. As proposed, a covered company is required to recognize an exposure to a third party in an amount equal to the covered company's exposure to the associated fund or vehicle itself, even if the third party's failure would result in a de minimis loss to the covered company.[25] We believe this result does not further the objective of the Proposed Rule to limit the risks that a failure of one firm could pose to a covered company. That is, under the Proposed Rule, the credit exposure a covered company is required to recognize to a third party does not correlate with the risk that the failure of that party could pose to the covered company. Therefore, we ask that the Board, at a minimum, tie the required counterparty exposure to any third party to the expected loss that would result from such third party's failure or distress.

[23] Section 252.175(c).

[24] 81 Fed. Reg. at 14343.

[25] Section 252.175(c).

5. The Separate IHC and Combined U.S. Operations Requirements are Redundant and Add Unnecessary Operational Complexity to Risk Management

Should the Proposed Rule be enacted as is, FBOs and IHCs would be subject to multiple and often redundant exposure limits. For example, under the Proposed Rule, IHCs are subject to one set of exposure limits that apply directly to their operations and another set of limits due to the Proposed Rule's application to the CUSO level of operations (that is, the IHC plus any U.S. branches of the parent FBO). In addition, FBOs are already subject to existing a) large exposure limits in their home countries and b) federal and state lending limits applicable to the FBO's U.S. branches and agencies (and U.S. depository institutions, where applicable). By contrast, U.S. BHCs only would be subject to i) one set of exposure limits and ii) existing federal and state lending limits applicable their depository institution subsidiaries. We fully concur with the IIB comment that this disproportionate treatment of FBOs undermines competitive equality and the principle of national treatment, while also failing to take account of comparable home country standards.[26]

Leaving aside competitive equity concerns, it is unclear how the additional CUSO requirement advances the objectives of the Proposed Rule. Since most foreign jurisdictions apply large exposure limits at the parent company level, credit exposures at the CUSO level are already sufficiently monitored and regulated for most FBOs. Such home country credit exposure limits, applied on a global and consolidated basis, are the most effective means of addressing the Board's concerns. Applying another exposure limit regime specifically at the CUSO level adds no real risk-mitigating benefit. Indeed, because the CUSO is subject to the same exposure denominator that applies to the group-wide exposures under home country standards (i.e., global tier 1 capital), then CUSO exposures necessarily will be captured by group exposure limits in substantially the same way as those exposures would be under the proposed CUSO limits.[27] In short, the CUSO exposure requirements seem unnecessary in light of sufficient regulation by an FBO's home country regulator and do not advance any of the purposes of the Proposed Rule.

However, while the separate CUSO requirement may serve little purpose in achieving the objectives of the Proposed Rule, calculating exposures at the CUSO level will impose significant burdens on FBOs. In part this is a function of the simple fact that the CUSO level is not an existing or natural level for financial consolidation. FBOs therefore will be required to build large, duplicative systems that are capable of collecting the required financial information at the CUSO level, monitor CUSO level exposures, and provide detailed reports on such exposures on a daily basis. For example, Credit Suisse is authorized to use advanced approaches for the purposes of regulatory capital and large exposure calculations at the group-level; there will be significant operational

[26] IIB letter, p. 9.

[27] While there are instances where the CUSO exposure higher than the group one (where CUSO exposures are largely equal to Group, but uses a more punitive metric, or where the U.S. counterparty hedges are executed at the group level), they would be relatively rare and unlikely to be significantly higher.

challenges to build a separate monitoring and calculation system based on CEM for the CUSO.

Finally, the CUSO requirement creates yet another redundant and inconsistent regime for calculating credit exposures, the effect of which will be to complicate and hinder the management of risk across the firm. Other legal and risk management requirements and models provide for calculation of counterparty exposures, such as capital calculation rules, margin calculation rules, restrictions on transactions with affiliates, liquidity risk management regimes and collateral management processes, all of which further complicate an FBO's risk management function, particularly where the calculation methodologies diverge.

In short, the Proposed Rule's separate credit exposure calculation regime for FBO CUSOs would impose competitive disadvantages on FBOs, while creating significant operational burdens and needlessly complicating the risk management function. Since the separate CUSO requirement does not advance the purposes of the Proposed Rule, we strongly urge the Board to remove it from the final rule.

6. The proposed one year implementation period should be extended to a minimum of two years for all covered companies.

The Proposed Rule contemplates a two-tiered compliance schedule. Large Covered Companies would be required to comply with the rule one year from its effective date.[28] On the other hand, an FBO or IHC with less than $250 billion in total consolidated assets or $10 billion in total on-balance-sheet foreign exposures is required to comply with the rule within two years from its effective date.[29] We concur with the Associations' comment[30] that the Proposed Rule is complex and would impose a broad range of new requirements for covered companies that do not necessarily align with existing requirements in other contexts. As a result, covered companies will be required to create and implement new systems and process to comply with the Proposed Rule.

We anticipate that the time needed to build out such infrastructure will require more than a one-year compliance period. Accordingly, we request that the Federal Reserve revise the Proposed Rule's compliance schedule to provide, at a minimum, a two-year compliance deadline for all covered companies.

28 Sections 252.170(c)(1)(i) and 252.170(c)(2)(i).

29 Sections 252.170(c)(1)(ii) and 252.170(c)(2)(ii).

30 Associations' letter, p. 59-62.

7. Implications of the Proposed Rule for BHC/IHC Affiliated Asset Managers

A. *"Covered Entity" Definition*

The Bank Holding Company Act ("BHCA") "controlling influence" standard will limit the ability of BHC and IHC-affiliated asset managers from taking positions for clients due to the BHC's/IHC's consolidated credit limits, even in situations where the BHC/IHC would itself not be exposed to such positions. We are in agreement with letter drafted by The Clearing House Association and The Asset Management Group of the Securities Industry and Financial Markets Association (the "Association's Asset Management letter") that the definition of covered entity should only capture entities actually controlled by the BHC/IHC which have an economic relationship to the BHC/IHC and meaningfully subject the BHC/IHC to those entities' counterparty exposures.

BHC/IHC affiliated asset managers, during the normal course of business, may advise, seed, manage, or serve as general partner or managing member of an investment fund - obligations that, under the Proposed Rule, would denote controlling influence. Due to the Volcker Rule, while the BHC/IHC may have credit exposure to a 'covered fund' during the seeding period, there is a time limit for the BHC/IHC to own up to 100% of such fund's 'ownership interests'. After the end of the seeding period, the credit exposure is limited to 3 percent of the 'ownership interests' of the 'covered fund' unless other exemptions apply. Despite the de-minimis economic interest that the BHC/IHC and its subsidiaries such as Credit Suisse Asset Management ("CSAM") have to the 'covered fund' after the end of the seeding period, the BHC/IHC would still be deemed a controlling entity of the covered fund under the Proposed Rule if the independent board originally established by the BHC/IHC as seed investor remained unchanged, notwithstanding the fact that the majority of the 'covered fund' investors are third parties. Similarly, if CSAM had a 30 percent non-voting equity stake in a fund, CSAM's IHC parent would be considered to be in control of the fund, even if the IHC had no ability to prevent the fund from taking a position in, or extending credit to, one of the IHC's major counterparties.

While there may be concerns about "step-in" risk in such situations, regulatory reforms, such as the Volcker Rule, shield BHCs/IHCs from taking on the risks of their affiliated advisors' funds.

B. *"Counterparty" Definition*

We have already noted that the definition of connected counterparties would capture entities that are not actually economically interdependent, and, in so doing, impose serious burdens and potential risks on covered companies and their counterparties. We have also noted that reporting and monitoring the necessary data on a daily basis would be operationally onerous.

We have also noted that counterparties, even if they are publically reporting companies, generally do not disclose the type of information that would be relevant to a control analysis under the Proposed Rule. To conduct a control analysis under the BHCA standards, BHC/IHC affiliated asset managers would have to consider material nonpublic information from multiple sources, conducting a control analysis—i.e., sharing such information with other aggregated counterparties. However doing so would potentially violate the asset manager's own information barriers, introduce competitive issues and conflicts of interest, and impact client confidentiality.

C. Look-Through and De Minimis Threshold

We share the view expressed in the Associations' Asset Management Letter that credit exposures, unlike equity exposures, do not provide a covered entity with pro rata exposure to the underlying assets held by an investment fund. For example, CSAM, if it were to become a creditor to one of its investment funds, unlike a shareholder, would not necessarily suffer any losses if the fund suffered due to the failure or distress of one or more of the fund's counterparties. In conjunction with this, we also agree with the Associations' Asset Management letter that the de minimis threshold of the look-through should be calculated with respect to the size of an affiliated asset manager's investment in a fund, not its credit exposure to the fund's underlying assets. The Proposed Rule's de minimis threshold requires BHC/IHC affiliated asset managers to calculate their exposures to the underlying assets of their investment funds on a full look-through basis if they cannot demonstrate that their credit exposure to the issuer of each underlying asset held by the funds is less than 0.25 percent of the IHC's capital base. Such a calculation presents a large operational burden, as the affiliated asset manager's investment funds have a broad range of underliers, each of which is extremely unlikely to materially contribute to the asset manager's exposure to a particular counterparty.

The look-through in the Proposed Rule would require BHC/IHC affiliated asset managers to evaluate each of their exposures to all investment funds and analyze the underlying assets of each investment fund to which they have an exposure in order to determine whether they must apply the look-through. In many cases, the affiliated asset manager does not have access to daily, updated data for such underlying assets, as market practice dictates that such data be reported on either a monthly or quarterly basis. Additionally, depending on the nature of the underlier, the analysis becomes even more complicated; for example, if CSAM has a derivative exposure to an investment fund, CSAM would not have access to the same information about the investment fund's holdings as an investor, which may lead to gaps in the data required by the Re-proposal. Lastly, it is worth noting that because the definition of a covered entity includes any U.S. IHC and all its subsidiaries, it is possible that swap exposures of funds managed by one subsidiary such as CSAM would need to be calculated when the counterparty to such swaps is another subsidiary of the covered entity. From a risk perspective, there are already protections built in to protect client funds under the SEC Custody Rule so that any independent amount that would otherwise be posted to a Credit Suisse entity that is a subsidiary of the covered entity is instead posted to a third party custodian. We therefore suggest excluding such calculations from the look-through rules.

Further, in our view, exposures that are required because of regulatory obligations should be excluded from the look-through calculation, as such exposures cannot be sold down if they exceed the limits under the Proposed Rule. Retention of assets as mandated by regulation, such as under the Dodd Frank Act's Risk Retention Rule, artificially increase the chance of look-through for collateralized loan obligations by legally requiring a certain degree of exposure to a fund's underlying assets, adding to the likelihood that they will trigger the look-through.

***

We thank the Federal Reserve Board for its considerations of our comments. If you have any questions, please do not hesitate to contact the undersigned or Peter J. Ryan (202-626-3306; peter.ryan.3@credit-suisse.com).

Christopher Whelan
Managing Director & Chief Credit Officer, Americas